

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

THOMAS M DALTON
Claimant

APPEAL NO. 10A-UI-00033-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BROWNMILLR LEASING
&TRANSPORT INC**
Employer

**Original Claim: 12/06/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Dalton filed an appeal from a representative's decision dated December 24, 2009, reference 01, which denied benefits based on his separation from Brownmiller Leasing & Transport, Inc. (BLT). After due notice was issued, a hearing was held by telephone on February 11, 2010. Mr. Dalton participated personally. The employer participated by Todd Brownmiller and Joyce Brownmiller, Owners.

ISSUE:

At issue in this matter is whether Mr. Dalton was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Dalton's last period of employment with BLT was from July 8 until December 7, 2009. He worked as an over-the-road driver. He was discharged from the employment as a result of three incidents.

Mr. Dalton sustained an injury on October 14 when he slipped and fell as a result of an oil and water mix. He had to miss time from work as a result of the therapy needed for his injury. On November 13, he struck a concrete barrier while making a delivery and broke the step on the vehicle. He paid for the damages himself. The decision to discharge Mr. Dalton was made after he was arrested for shoplifting in New Mexico on December 1. The incident occurred at a truck stop when he walked out without paying for a book on audio tape. He was detained by the local sheriff's department but not incarcerated. He entered a plea of guilty to petty theft and paid a fine. The employer felt his conduct damaged its reputation and, therefore, discharged him when he returned.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The fact that Mr. Dalton sustained a work-related injury was not an act of misconduct. There was no evidence that he was being careless or was otherwise at fault for the slip and fall on October 14. The incident of November 13 was, at most, an isolated instance of negligence and not deliberate misconduct.

Mr. Dalton's conduct in engaging in criminal behavior while on the job was contrary to the type of behavior the employer had the right to expect. The administrative law judge appreciates that the crime was a relatively minor one. However, it occurred while he was on the job and at a truck stop that other BLT drivers might have occasion to patronize. His conduct had the potential of tainting other BLT drivers. Because it occurred at a truck stop, word of the incident might spread to other drivers and from there to potential customers of BLT.

Mr. Dalton knew or should have known that his employer expected his conduct to be honest and aboveboard while operating its vehicles and representing it to the public. His actions of December 1 were clearly contrary to that expectation. For the reasons cited herein, it is concluded that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated December 24, 2009, reference 01, is hereby affirmed. Mr. Dalton was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw